IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

WP(C).No. 33271 of 2006(J)

PETITIONER:

P.V.JOLLY, AGED 51 YEARS,
S/O.P.V.VARKEY, RESIDING AT PANIKULAM HOUSE,
PULIYANAM P.O. ANGAMALY, ERNAKULAM DISTRICT.

BY ADV. SRI.V.S.CHANDRASEKHARAN

RESPONDENTS:

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1. THE MANAGER,
KERALA FINANCIAL CORPORATION,
BRANCH OFFICE, KALOOR P.O., ERNAKULAM.

2. MANAGING DIRECTOR,
KERALA FINANCIAL CORPORATION, TRIVANDRUM.

3. DEPUTY TAHSILDAR (R.R.),
KERALA FINANCIAL CORPORATION, ERNAKULAM.

BY ADV. SRI.M.M.SAYED MUHAMMED, SC, KFC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/01/2007, ALONG WITH WPC NO. 34267 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) Nos.33271 & 34267 of 2006

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Dated this the 5th day of January, 2007.

JUDGMENT

The petitioners are husband and wife who have availed separate industrial loans from KFC for starting a food industry as well as a furniture manufacturing industry. On account of default, the industries are taken over by KFC in exercise of powers under Section 29 of the State Financial Corporations Act. Since KFC could not sell the industries, they have initiated RR proceedings now and consequently petitioners' house is attached. The case of the petitioner is that the business has collapsed and therefore, they could not raise funds to pay off the arrears. If business is not viable, then the solution is only to sell industry or land and settle the liability. It is for the petitioners to arrange buyers for purchase of any item of property and settle liability at the earliest. The counsel for KFC has stated that petitioners' claim for OTS benefit cannot be granted to them because the loan accounts have not become NPA, which only means that petitioners have been making some payment or other to prevent the account becoming NPA. The agreed rate of interest is stated to be 16.5% which is obviously quite high. In the circumstances and since the KFC could not

sell the industrial property for recovering the arrears, I feel the KFC should waive penal interest provided petitioners clear the arrears with agreed rate of interest within a reasonable period. Counsel for the petitioner submitted that if the industrial units are kept idle, the same will lead to corrosion and loss in value. In the circumstances and in view of the undertaking by the petitioners that petitioners will remit rupees two lakhs immediately for handing over possession of industries and the entire liability will be settled by 30.4.2007, the W.Ps. are disposed of with the following directions.

The KFC will prepare an inventory of the machinery, articles etc. in both the industries and reconvey possession to the petitioners after petitioners remit Rs.2 lakhs. It would be open to the petitioners to start running the industry without parting with possession or selling any item of plant, machinery, furniture or any valuable equipment and maintain the same in good condition. The petitioners are given time till 30.4.2007 to settle balance arrears exclusive of penal interest and collection charges. If petitioners fail to settle liability by 30.4.2007, then there will be direction to the petitioners to hand over free of possession the two industries and also the collateral security which is the residential property, to KFC for sale in auction and in that event, the waiver of penal interest granted for payment within the time stated will also stand vacated. In the event of default in

settlement and failure to reconvey possession of all the three properties including the house, KFC can move this court for initiating contempt against the petitioners. Petitioners are free to negotiate and enter into agreement for sale of any mortgaged property. However, sale deed will be executed after arrears are cleared to KFC and on their releasing title deeds.

C.N.RAMACHANDRAN NAIR
Judge

pms